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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91227320
Party	Defendant DigestSource, LLC
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Submission	Answer
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Date	05/12/2016
Attachments	Answer to 91227320 Opposition.pdf(17341 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BAYER HEALTHCARE, LLC,)	
)	
)	
Opposer,)	Mark: MIRALAX
)	Opposition No. 91227320
v.)	Serial No. 86/705,311
)	
DIGESTSOURCE, LLC,)	
)	
)	
Applicant.)	
)	
)	
)	

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the original of this Answer is being electronically filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office through the web site at <http://esta.uspto.gov> on May 12, 2016.

/JENNIFER L. WHITELAW/
JENNIFER L. WHITELAW

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES
TO OPPOSER’S NOTICE OF OPPOSITION**

Applicant, **DIGESTSOURCE, LLC** (hereinafter ‘Applicant’), hereby files its Answer and Affirmative Defenses to the Notice of Opposition filed by Opposer, **BAYER HEALTHCARE, LLC** (hereinafter “Opposer”), and states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies same.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies same.
5. Applicant states that the referenced federal record speaks for itself and denies the remainder of the allegations of paragraph 5.
6. Applicant denies the allegations of paragraph 6.
7. Applicant denies the allegations of paragraph 7.
8. Applicant admits the allegations of paragraph 8.
9. Applicant states that the referenced federal record speaks for itself and denies the remainder of the allegations of paragraph 9.
10. Applicant denies the allegations of paragraph 10.
11. Applicant denies the allegations of paragraph 11.
12. Applicant denies the allegations of paragraph 12.
13. Applicant denies the allegations of paragraph 13.
14. Applicant denies the allegations of paragraph 14.
15. Applicant denies the allegations of paragraph 15.
16. Applicant denies the allegations of paragraph 16.
17. Applicant denies the allegations of paragraph 17.
18. Applicant states that the referenced federal record speaks for itself and denies the remainder of the allegations of paragraph 18.
19. Applicant denies the allegations of paragraph 19.

20. Applicant denies the inference that any permission was required and denies the remainder of the allegations of paragraph 20.
21. Applicant denies the allegations of paragraph 21.
22. Applicant denies the allegations of paragraph 22.
23. Applicant denies the allegations of paragraph 23.
24. Applicant further denies each, every and all of the remaining allegations asserted by Opposer in all counts and/or paragraphs of the Notice of Opposition which are not expressly admitted to be true herein and, based on present knowledge and belief, and sets forth its following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

Applicant's mark is not confusingly similar to Opposer's mark with respect to the goods or services as set forth in the application, nor would use and/or registration of Applicant's mark create a likelihood of confusion, deception, or mistake, nor would said use and/or registration result in damage to Opposer's claimed rights.

SECOND AFFIRMATIVE DEFENSE

As to the subject matter set forth in the Application, Applicant, not Opposer, has priority, and is the senior user as between the parties hereto.

THIRD AFFIRMATIVE DEFENSE

Opposer has failed to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Opposer's assertion of rights against Applicant is barred, in whole or in part, by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

Opposer's Opposition is barred, in whole or in part, by the doctrine of acquiescence.

SIXTH AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition is barred, in whole or in part, by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

Opposer's Opposition is barred, in whole or in part, by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Opposer is not the real party in interest to enforce all or some of the rights claimed in this action.

NINTH AFFIRMATIVE DEFENSE

Opposer lacks standing to oppose the subject Application.

ADDITIONAL AFFIRMATIVE DEFENSES RESERVED

Applicant specifically reserves the right to assert such additional Affirmative Defenses as may be found to be applicable through or following discovery in this action.

WHEREFORE, having fully answered and set forth its Affirmative Defenses as required by law, Applicant requests that the Notice of Opposition herein be dismissed with prejudice at the cost of Opposer, and that registration of Applicant's mark be allowed.

Respectfully submitted,

/JENNIFER L. WHITELAW/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF OPPOSITION** was mailed to:

Vanessa A. Ignacio, Esq.
Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, NJ 07068

via first class mail, postage prepaid on May 12, 2016.

/JENNIFER L. WHITELAW/
JENNIFER L. WHITELAW